

**Security Council**

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Letter dated 31 August 2010 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

With reference to the latest decisions of Pre-Trial Chamber I of the International Criminal Court of 27 August 2010 informing the Security Council about the visits of His Excellency Mr. Omer Hassan Al-Bashir, President of the Republic of the Sudan, to the Republic of Chad and Republic of Kenya, and the statements attributed to some members of the Security Council on the same subject, please find attached the press communiqué issued by the African Union condemning the latest move by the International Criminal Court (see annex).

The communiqué reflected the deep concern expressed by the African Union Commission about the decisions of the International Criminal Court, highlighted the obligations of the African Union Member States arising from the constitutive act of the African Union, recalled the repeated appeals of the African Union to the Security Council to defer the proceedings of the International Criminal Court concerning the Sudan, which are being totally ignored by the Security Council, denounced the attempts of the International Criminal Court to involve the Security Council in pressuring the African Union Member States to support the International Criminal Court, irrespective of the complex dynamics on the ground which require balance between peace and justice, and clearly stated the opposition of the African Union to any attempt to coerce African countries to undermine the common African position in this regard.

I would highly appreciate if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Daffa-Alla Elbag Ali **Osman**
Permanent Representative



Annex to the letter dated 31 August 2010 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

Press release on the decision of the Pre-Trial Chamber of the International Criminal Court informing the Security Council and the Assembly of the States Parties to the Rome Statute about the presence of President Omer Hassan Al-Bashir of the Sudan in the territories of the Republic of Chad and the Republic of Kenya

The African Union Commission had noted with grave concern statements attributed to some members of the Security Council, as well as the decisions of the International Criminal Court (ICC-02/05-01/09) of 27 August 2010 of Pre-Trial Chamber I of the International Criminal Court informing the Security Council and the Assembly of the States Parties to the Rome Statute about Omer Al-Bashir's presence in the territories of the Republic of Chad and the Republic of Kenya.

The said statements and the decisions assert that the two African Union Member States have "a clear obligation to cooperate with the Court in relation to the enforcement of such warrants of arrest, which stems both from the United Nations Security Council resolution 1593 (2005) whereby the United Nations Security Council 'urge[d] all States and concerned regional and other international organizations to cooperate fully' with the Court, and from article 87 of the Statute of the Court", to which the two countries are States Parties. The African Union Commission further notes that the decisions of Pre-Trial Chamber I were made strangely in respect of the "expected attendance of Omer Al-Bashir at the celebration scheduled for Friday, 27 August 2010".

The African Union Commission expresses its deep regret that both the statements and the decisions grossly ignore and make no reference whatsoever to the obligations of the two countries to the African Union arising from decisions Assembly/AU/Dec.245(XIII) adopted by the thirteenth ordinary session of the Assembly of Heads of State and Government, wherein the Assembly "Decide[d] that in view of the fact that the request by the African Union has never been acted upon (by the United Nations Security Council), the African Union Member States shall not cooperate pursuant to the provisions of article 98 of the Rome Statute of the International Criminal Court relating to immunities for the arrest and surrender of President Omer Al-Bashir of the Sudan", which decision was reiterated (decision Assembly/AU/Dec.296(XV) at the fifteenth ordinary session of the Assembly in July 2010 in Kampala, Uganda. Additionally, the statements and the decisions did not take cognizance whatsoever of the obligations of African Union Member States arising from article 23 (2) of the Constitutive Act of the African Union, which obligates all States Members of the African Union "to comply with the decisions and policies of the Union". Thus, the decisions adopted by the policy organs of the African Union are binding on Chad and Kenya and it would be wrong to coerce them to violate or disregard their obligations to the African Union.

It is to be recalled that the repeated appeals to the United Nations Security Council by the Assembly of Heads of State and Government of the African Union as well as the Peace and Security Council of the African Union to defer the proceedings against President Omer Hassan Al-Bashir of the Sudan for one year in

application of the provisions of article 16 of the Rome Statute have never been acted upon by the United Nations Security Council. The same United Nations Security Council, which has ignored this request by the States Members of the African Union and which includes States that have no obligations to the International Criminal Court, has no moral authority to sit in judgement over Chad and Kenya. Indeed, by virtue of their membership of the African Union, these two countries have committed themselves to "condemnation and rejection of impunity" and voluntarily negotiated the Rome Statute along with the Organization of African Unity and joined the International Criminal Court with a view to enhancing the fight against impunity.

The African Union Commission recalls that both Chad and Kenya, being neighbours of the Sudan, have an abiding interest in ensuring peace and stability in the Sudan and in promoting peace, justice and reconciliation in that country, which can only be achieved through continuous engagement with the elected Government of that country. Neighbouring countries do this as a matter of survival as they bear the brunt of instability or insecurity in neighbouring States. Kenya, as a member of the Intergovernmental Authority on Development and a guarantor to the peace process in the Sudan, arising from the implementation of the comprehensive peace agreement and the impending referendum in South Sudan, has a duty and obligation to continuously engage with President Omer Hassan Al-Bashir and President Silva Kiir.

It is to be noted that engagement with the elected leaders of the Sudan is vitally and strategically essential and unavoidable for the countries of the region as well as the entire continent, which by their location are better able to understand and take into account the local realities and dynamics. The attempt to involve the United Nations Security Council in this matter is yet another effort to pressurize African countries to support the International Criminal Court irrespective of the complex dynamics on the ground which require a fine balance between peace and justice and, in this regard, the African Union shall oppose any attempt to coerce African countries to undermine the common African position.

The African Union will continue to fight against impunity as required by the relevant Assembly decisions as well as article 4 of the Constitutive Act and shall oppose the pretensions and double standards that are evident from the statements being made about the two countries. The African Union believes and will continue to pursue in respect of the Sudan the interconnected, mutually interdependent and equally desirable objectives of peace, justice and reconciliation. It also requests all African countries and friends of Africa to reject any draft resolution that may be tabled before the United Nations Security Council on this matter.

Addis Ababa, 29 August 2010